It is not surprising that international economic law, and particularly the regulation of transnational corporations (TNCs), should have been such an important focus of both politics and policy-making. The world’s political economy for the past century has been marked by the interacting and international processes which have transformed both national economies increasingly dominated by large TNCs, and states gradually torn apart by the contending forces of nationalism and globalization. The study of these processes has fascinated me since my postgraduate student days. Yet I found that, while they were clearly central, their understanding posed challenges to orthodox disciplinary perspectives, as well as to the formulation of political and policy responses.

In the traditional law curriculum both international law and economic law were ill-adapted to understanding this reality, since each was separated into public and private law spheres. The international economy was considered a realm of private markets, so was dealt with only in terms of international commercial law, which largely ignored both state economic regulation and the dominant role of large corporations. Other disciplines were equally unsuited, as politics, economics and even sociology focused on the national state, so that ‘international relations’ were those of governments, and international economics dealt with flows of goods and money. Indeed, formal economics still treats TNCs in terms of ‘foreign direct investment’, and the study of TNCs moved to business schools, treating them predominantly from an organizational and managerial perspective. However, more independent and eclectic analyses of TNCs also emerged, from Edith Penrose to John Dunning and Grazia Ietto-Gillies, as well as some excellent work by economic sociologists.

Hence, I saw that an adequate understanding of important realities required a challenge to orthodox viewpoints, in other words a critical perspective. Furthermore, such a perspective could not emerge solely from academic analysis, which seemed stuck in old orthodoxies, but from some practical engagement with the real world. Interestingly, this seemed easiest in the legal field, perhaps because the interactions of economic and political activities are centrally mediated by law. Indeed, the field of ‘transnational law’ was delineated as early as 1956 by a lawyer-diplomat, Philip C. Jessup. This concept quickly invaded US law schools, resulting in a proliferation of law reviews and courses in this field which helped to provide a grounding for the generations of lawyers who spread around the world, facilitating the expansion of TNCs as well as building the regulatory infrastructures of what later became known as global entities.

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1 The leading text in the UK for many years through successive editions was Schmitthoff’s The Export Trade; in the US I took a course at Chicago Law School on International Business Transactions with Soia Mentschikoff, who had worked on the Uniform Commercial Code with Llewellyn, and took what was later described as a ‘regulatory contracts’ approach (Collins, Regulating Contracts, 1999); and another with Kenneth Dam, Chicago’s equivalent of Philip Jessup, who later served in several US administrations before returning to teach.


3 Jessup was in the secretariat of the United Nations Relief and Rehabilitation Administration (UNRRA) conference in 1943, at Bretton Woods in 1944, and a technical advisor to the American delegation to the San Francisco United Nations charter conference in 1945; but his nomination by Truman as US delegate to the UN was blocked in the Senate following accusations by Senator McCarthy of ‘unusual affinity for Communist causes’.
governance. Indeed, the initially unorthodox concepts such as transnationalism no doubt help to mould the emergence of these new forms of business and government in the past half-century. Thus, practical engagement did not necessarily lead to a critical perspective in policy or political terms, on the contrary it tended mainly to serve politically and economically dominant, or emergent, interests. Perhaps for that reason, many in academia have been reticent or hostile towards such engagement, considering it as contaminating. This may also lead to suspicion of concepts or discourses emerging from the world of practice. Consequently, some academics prefer to stick to orthodoxies, while others develop more radical alternative frameworks aimed at escaping the grip of power, sometimes protecting themselves from it behind abstruse academic jargon.

It is certainly important, even essential in my view, for academic inquiry to be independent and to some extent insulated from social conflicts and power struggles. This should enable a longer-term analysis, abstracting from day-to-day professional practice or the hurly burly of politics, aiming to understand and depict the contours and ecology of the forest as a whole, and not content with knowing only the particularities of specific trees. Indeed, I have often been surprised and intrigued to find, when interviewing or simply talking with a practitioner or policy-maker, that in some ways I had a better grasp of the general policy issues in their field, although they were obviously much more immersed in and skilled at its practical detail. This detachment also means that the academic can appreciate the positions of the various participants in the debates or conflicts in a field, and can discern that each person sees and understands that field in terms which are valid from their own perspective. That appreciation in turn tends to strengthen the preference for detachment. Is it possible to retain that important detachment if one takes a position in the field?